IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4416 of 2005
Date of Decision: 11.9.2007

Yash Pal and others ....Petitioners

Versus

Mohinder Singh and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Rajnish Gupta, Advocate, for the petitioners.

Shri Harsh Aggarwal, Advocate, for the respondents.

HEMANT GUPTA, J.

The plaintiffs are in revision aggrieved against the order passed by the learned trial Court on 17.5.2005, whereby an application for amendment of the plaint so as to incorporate challenge to the decree dated 5.6.1992 in Civil Suit No. 469 of 1992, was declined.

The plaintiffs are in fact, sons of defendant No.2. Defendant No.2 has suffered a decree dated 4.4.1992 in Civil Suit No. 298/92 on the basis of arbitration award. Vide the aforesaid decree, the award dated 29.2.1992 Exhibit C.1 was made rule of the Court. Mohinder Singh defendant No.1 beneficiary of the decree dated 4.4.1992 suffered a decree in favour of his son on 23.3.1996 in Civil Suit No. 130 of 1996. The plaintiffs filed the suit challenging the decree dated 4.4.1992 and 23.3.1992.

The grievance of the petitioners is that during the course of evidence of defendant No.1, it transpired that defendant No.2 i.e. father of defendant No. 1 has suffered another decree dated 5.6.1992 in Civil Suit No. 469 of 1992 on the basis of arbitration award dated 1.5.1992.

The plaintiffs sought amendment so as to incorporate the challenge to the said decree. The said amendment has been declined by the learned trial Court on the ground that the defendants have pleaded about the said fact in the written statement and, therefore, the plaintiffs were aware of the said decree, but still the plaintiffs have not sought the amendment. Therefore, the amendment has been sought after gross delay. It was also pointed out that the amendment cannot be allowed when the trial has concluded, in terms of the amended provisions of the Code of Civil Procedure.

After hearing the learned counsel for the parties, I am of the opinion that both the reasons given by the learned trial Court are not correct. In the written statement, copy of which has been appended with the revision as Annexure P.1, a reference is made to a decree suffered by defendant No.2 from the Court of Shri A.K. Suri, the then Sub Judge, Ist Class, Kurukshetra. Such is the decree dated 4.4.1992. There is no reference to the decree dated 5.6.1992 in Civil Suit No. 469 of 1992 passed by the Court of Shri Kuldeep Jain, Additional Senior Sub Judge, Kurukshetra. Therefore, the reasoning given by the learned trial Court that the factum of decree was disclosed in the written statement is not correct. It may noticed that the plaintiffs have laid challenge to the decree dated 4.4.1992 arising out of the award dated 28.2.1992. There is another award dated 1.5.1992 against defendant No.2. On the basis of the said award, another decree was passed on 5.6.1992. The grounds of challenge as are available to the decree dated 4.4.1992 are also very well applicable in respect of the decree dated 5.6.1992. In view of the fact that the grounds of challenge to both the decrees are the same, therefore, the plaintiffs should have been permitted to amend the plaint. It is the categorical stand of the petitioners before this

Court as well that no oral evidence is required to be led even if the amendment is allowed.

The other reasoning that the trial stands concluded and therefore, the amendment cannot be allowed is also not tenable. Section 16(2)(b) of the Code of Civil Procedure (Amendment) Act, 2002, provides that the provisions of the amended Order 6 Rule 17 CPC will not be applicable in respect of the pleadings filed before 1.7.2002.

In view of the above, the present revision petition is allowed. The impugned order dated 17.5.2005 set aside. The plaintiff-petitioners are permitted to amend the plaint so as to incorporate the challenge to the decree dated 5.6.1992. However, it is clarified that the plaintiffs shall not be entitled to lead any oral evidence in respect of the amendment allowed by this Court.

11-09-2007 (HEMANT GUPTA)
ds JUDGE